

*Counsel shall attend a
conference with the court
on Nov. 2, 2012, 10⁰⁰ am.*

MICHAEL A. CARDOZO
Corporation Counsel

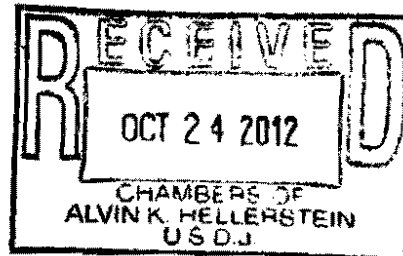
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10-25-12
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October 23, 2012

BY HAND

Honorable Alvin K. Hellerstein
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007



Re: Chirstian Sinisterra v. City of New York, et al.,
12-cv-6944 (AKH)

Your Honor:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department and represent defendants City of New York and New York City Department of Correction ("City Defendants") in the above-referenced matter. City Defendants write in response to the Court's endorsement of Plaintiff's letter dated October 16, 2012. City Defendants agree that this matter should be taken out of the Southern District of New York's Plan for Certain § 1983 Cases Against the City of New York ("the Plan"). In addition, City Defendants respectfully request that their time to answer or otherwise respond to the Complaint be extended to December 3, 2012. As described below, this is City Defendants' second request for an extension in this matter. Plaintiff, through counsel, consents to the requested extension of time.

A. Factual and Procedural History

This matter concerns Plaintiff's allegations that, after pleading guilty to Assault in the Third Degree and being sentenced to a term of one year of definite imprisonment, he was held in New York City Department of Correction custody past the expiration of his sentence. Specifically, Plaintiff alleges that he was arrested on October 10, 2010, sentenced on February 7, 2011, and released on November 8, 2011. City Defendants were served on September 13, 2012.

Also on September 13, 2012, a Notice of Participation in the § 1983 Plan was posted on the docket.

By letter dated October 4, 2012, City Defendants requested that this matter be taken out of the Plan because the Plan only contemplates actions against the New York City Police Department—not the Department of Correction. City Defendants also requested that, should the case be taken out of the Plan, their time to answer, which absent the Plan would be October 4, 2012, be extended until December 3, 2012. The Court denied City Defendants' requests and ordered that the case proceed with the Plan. (Docket Entry No. 3.) On October 16, 2012, Plaintiff submitted a letter to the Court requesting that the Court reconsider its denial of City Defendants applications, both that this matter be taken out of the Plan and that City Defendants be granted additional time to respond to the Complaint. (Docket Entry No. 4.) The Court endorsed that letter as follows: "Unless both sides agree, this case shall proceed as scheduled." (*Id.*)

B. City Defendants Agree That This Matter is Not Suitable For the Plan

City Defendants request, along with Plaintiff, that this matter be taken out of the Plan. As Plaintiff noted in its October 16, 2012, letter, the Plan only contemplates certain actions brought against the New York City Police Department. Most notably, the Plan provides for a limited discovery period during which the defendants are required to disclose specific documents maintained by the Police Department. Accordingly, the Plan cannot be used in the Department of Correction context because the rules pertaining to the limited discovery period are inapplicable. As such, City Defendants agree with Plaintiff, and respectfully request that this matter be taken out of the Plan.

C. Extension of Time to Answer or Otherwise Respond

Plaintiff served City Defendants on September 13, 2012. Thus, absent the Plan, City Defendants' response to the Complaint would have been due October 4, 2012.¹ Accordingly, and for the reasons set forth in its letter dated October 4, 2012, City Defendants respectfully renew their request that, should this matter be taken out of the Plan, their time to answer or otherwise respond be extended from October 4, 2012 until December 3, 2012. Plaintiff consents to this request. The requested extension will not affect any other scheduled dates.

¹ Under the Plan, City Defendants have eighty days to answer the Complaint meaning that, as it stands, their answer is due December 2, 2012, which is a Sunday.

D. Conclusion

For the foregoing reasons, defendant City respectfully request: (1) that this matter be taken out of the § 1983 Plan; and (2) that the time for City Defendants to answer or otherwise respond be extended for sixty-days, from October 4, 2012 until December 3, 2012.

City Defendants thank the Court for its time and its consideration of these requests.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Uriel B. Abt', with a long horizontal flourish extending to the right.

Uriel B. Abt
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